

**BEFORE THE COMMISSIONER FOR THE  
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS  
COMPLIANCE DIVISION**

**IN THE MATTER OF:**

**FEDERAL MORTGAGE SAVINGS, INC.**

**DOCKET NO. 03.06-106118J**

**ORDER**

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **April 7, 2010.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION  
WILLIAM R. SNODGRASS TOWER  
312 EIGHTH AVENUE NORTH, 8<sup>th</sup> FLOOR  
NASHVILLE, TENNESSEE 37243-0307

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE COMMISSIONER FOR THE  
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS  
COMPLIANCE DIVISION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>DEPARTMENT OF FINANCIAL</b>	)	
<b>INSTITUTIONS, COMPLIANCE DIVISION,</b>	)	
	)	
<b>Petitioner,</b>	)	<b>DOCKET NO. 03.06-106118J</b>
	)	<b>TDFI # 08-60-C</b>
<b>v.</b>	)	
	)	
<b>FEDERAL MORTGAGE</b>	)	
<b>SAVINGS, INC.,</b>	)	
	)	
<b>Respondent.</b>	)	

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**NOTICE OF DEFAULT AND INITIAL ORDER**

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This matter came to be heard on Tuesday, March 2, 2010, at 10:00 a.m. central standard time, before Administrative Judge Thomas G. Stovall of the Administrative Procedures Division of the Tennessee Department of State, sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter, "Commissioner"). The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter, "Petitioner") was represented by Eric E. Rogers, staff attorney with the Department of Financial Institutions. No attorney has made an appearance on behalf of Federal Mortgage Savings, Inc. (hereinafter, "Respondent").

Judge Thomas G. Stovall is vested with jurisdiction to hear this matter on behalf of the Commissioner pursuant to TENN. CODE ANN. § 45-1-105 and the Tennessee Residential Lending, Brokerage and Servicing Act, TENN. CODE ANN. §§ 45-13-101 *et*

*seq.* (hereinafter, "Mortgage Act"). This matter is a contested case proceeding pursuant to the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-301, *et seq.*, initiated by the Petitioner seeking an order requiring the Respondent to: (1) pay a civil monetary penalty not to exceed Thirty-Thousand and No/100 Dollars (\$30,000) for the three (3) violations of TENN. CODE ANN. § 45-13-126(a)<sup>1</sup> [now TENN. CODE ANN. § 45-13-401(4)]; and (2) refund One-Thousand Four-Hundred Ten and 94/100 Dollars (\$1,410.94) to the borrower of loan number 20071456 collected in violation of TENN. CODE ANN. § 45-13-109(e)(1) [now TENN. CODE ANN. § 45-13-401(8)].

After consideration of the pleadings, the argument of counsel, witness testimony and the entire record as a whole, it is **DETERMINED** that the maximum relief requested by the Petitioner in the Notice of Charges **SHOULD** be granted. Said decision is based on the Preliminary Rulings and Order of Default, Findings of Fact, and Conclusions of Law stated below.

### **PRELIMINARY RULINGS AND ORDER OF DEFAULT**

1. The record indicates that the Respondent was served with a Notice of Opportunity for a Hearing and of the Rights of the Respondent and a Notice of Charges (Notice) on May 21, 2009, and that the Respondent did not prepare or produce any formal response. After the Respondent was served with the Notice there was oral

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<sup>1</sup> In June 2009, the Tennessee legislature amended the Tennessee Residential Lending, Brokerage and Servicing Act of 1988. The amendments expanded, reworded and/or rearranged certain Mortgage Act provisions; however, the purpose and substance of many provisions remain unchanged. See Tennessee Residential Lending, Brokerage and Servicing Act, ch. 499, 2009 Tenn. Pub. Acts 6 [hereinafter "New Mortgage Act"] (effective July 1, 2009) (revising licensing and regulation of mortgage lenders, mortgage loan brokers, mortgage loan servicers and mortgage loan originators). Within this Order, the old statutory references are made, as contained in the Notice of Charges provided to the Respondent and filed with the Court, followed by the corresponding current statutory citation.

communication between counsel for the Petitioner and the Respondent. Such communication ceased in August 2009, and the Petitioner has been unable to contact the Respondent since that time.

2. A Notice of Hearing was mailed to the Respondent in care of its registered agent for service of process on February 9, 2010, and the Respondent did not respond in any way to the Petitioner.

3. The Court prepared an Order that was entered on February 10, 2010 in this matter, which was mailed both to the Petitioner and to the Respondent in care of its registered agent on February 10, 2010.

4. Having received no response, at the hearing of this matter on March 2, 2010, counsel for the Petitioner orally moved to hold the Respondent in default, and to continue on an uncontested basis pursuant to TENN. CODE ANN. § 4-5-309(a) and Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies Rule 1360-4-1-.15, based upon Respondent's failure to appear at the hearing or to respond in any way.

5. Petitioner's oral motion for default was granted, and it was **ORDERED** to the Respondent be held in default for failing to appear after due notice.

6. Having held the Respondent in **DEFAULT**, the matter was tried as uncontested pursuant to Rule 1360-4-1-.15 of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies.

### **FINDINGS OF FACT**

7. Tenn. Code Ann. § 45-1-104 provides that the Department is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions).

8. The Commissioner is responsible for the administration, enforcement, and interpretation of the Mortgage Act, and any rules promulgated pursuant to the Mortgage Act.

9. The Petitioner is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Mortgage Act.

10. The Respondent was a Rhode Island for-profit corporation whose principal office was 1017 Waterman Avenue, East Providence, Rhode Island 02914.

11. The Respondent's registered agent for service of process is InCorp Services, Inc., whose current address is 216 Centerview Drive - Suite 317, Brentwood, Tennessee 37027. At the time of filing the Notice of Charges, the registered agent's address was 7176 Forrest Oaks Drive, Nashville, Tennessee 37221.

12. The Respondent, at all times relevant hereto, was licensed by the Department, having been issued license number 3531.

13. The Respondent was served with a "Notice of Charges" and a "Notice of Opportunity for a Hearing and of the Rights of the Respondent" in the above-captioned case through its registered agent on May 21, 2009.

14. The Respondent was mailed a "Notice of Hearing" in care of its registered agent on February 9, 2010.

15. The Respondent was mailed an "Order" regarding this matter in care of its

registered agent on February 10, 2010.

16. The Respondent was examined by the Department beginning on February 6, 2008, and finishing on February 8, 2008.

17. On or about February 18, 2008, the Department completed a "Report of Examination," which was reviewed by and signed by a representative of Respondent.

18. The Respondent had Micah Jenks perform loan origination activities prior to that date on loans numbered 002004745064, 002004854502 and 002004757760. Micah Jenks was never registered with the Department as a mortgage loan originator.

19. The Respondent began processing loan application file number 070910003 (which later became loan file number 20071456) for a borrower on or about September 10, 2007.

20. As part of the processing of the loan application file, the Respondent prepared a Good Faith Estimate of closing costs for the borrower.

21. The Good Faith Estimate of closing costs prepared for this borrower failed to reflect the payment of any brokerage premiums to be paid to the Respondent as a result of the loan.

22. At the closing of loan file number 20071456, the Respondent received One-Thousand Four-Hundred Ten and 94/100 Dollars (\$1,410.94) in brokerage premium paid to the Respondent from the borrower's loan proceeds as a result of the closing.

23. This fee was never disclosed to the borrower as required for the loan.

#### **CONCLUSIONS OF LAW**

24. TENN. CODE ANN. § 45-13-126(a) [now TENN. CODE ANN. § 301(a)] states

that “[a]n individual...shall not engage in the business of a mortgage loan originator with response to any dwelling located in this state without first obtaining and maintaining annually a license issued by the commissioner...”

25. TENN. CODE ANN. § 45-13-109(e)(1) [now TENN. CODE ANN. § 45-13-401(8)] prohibits “mak[ing], in any manner, any false or deceptive statement or representation to a borrower or potential borrower, including, but not limited to, a false or deceptive statement or representation with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.”

26. The Findings of Fact set forth above show by a preponderance of the evidence that the Respondent, while a licensee under the Act, committed three (3) violations of TENN. CODE ANN. § 45-13-126(a) [now TENN. CODE ANN. § 45-13-301(a)] by having one individual listed in numbered paragraph eighteen (18) above perform mortgage loan origination services while not registered with the Department as a mortgage loan originator of the Respondent.

27. The Findings of Fact set forth above show by a preponderance of the evidence that the Respondent, while a licensee under the Act, violated TENN. CODE ANN. § 45-13-109(e)(1) [now TENN. CODE ANN. § 45-13-401(8)] by charging a brokerage premium to a borrower, as described in numbered paragraphs nineteen (19) through twenty-three (23), that was undisclosed to the borrower as was unearned by the Respondent.

28. TENN. CODE ANN. § 45-13-116 [now TENN. CODE ANN. § 45-13-405(a)] provides, in part, that if, after notice and opportunity for a hearing, the Commissioner

finds that a person has violated this chapter, the commissioner may take any or all of the following actions:

(2) Require the refund of any interest, fees, or charges collected by the person in violation of this chapter or any administrative rule issued pursuant to this chapter; [and]

(3) Order the person to pay the commissioner a civil monetary penalty of not more than ten thousand dollars (\$10,000.00) for each violation of this chapter or administrative rule issued pursuant to this chapter...

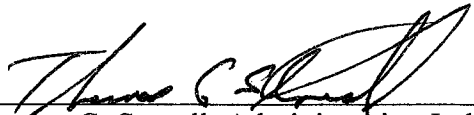
29. Because the Findings of Fact are sufficient to establish by a preponderance of the evidence that the Respondent has committed the violations of the Act stated herein, TENN. CODE ANN. § 45-13-116 [now TENN. CODE ANN. § 45-13-405(a)] provides grounds to order the Respondent to pay a civil monetary penalty of Thirty-Thousand and No/100 Dollars (\$30,000.00), and to order the Respondent to make a refund to the borrower of loan number 20071456 in the amount of One-Thousand Four-Hundred Ten and 94/100 Dollars (\$1,410.94).

### **ORDER**

IT IS THEREFORE **ORDERED, ADJUDGED AND DECREED** that the Respondent, Federal Mortgage Savings, Inc., shall pay to the Department of Financial Institutions a civil monetary penalty of Thirty-Thousand and No/100 Dollars (\$30,000.00) for three (3) violations of TENN. CODE ANN. § 45-13-126(a) [now TENN. CODE ANN. § 45-13-401(4)], and shall refund to the borrower of the loan number 20071456 the fee collected in the amount of One-Thousand Four-Hundred Ten and 94/100 Dollars (\$1,410.94), that was unearned by the Respondent, in violation of TENN. CODE ANN. § 45-13-109(e)(1) [now TENN. CODE ANN. § 45-13-401(8)].



This Initial Order entered and effective this 23<sup>rd</sup> day of MARCH, 2010.

  
\_\_\_\_\_  
Thomas G. Stovall, Administrative Judge

Filed in the Administrative Procedures Division this 23<sup>rd</sup> day of MARCH, 2010.

  
\_\_\_\_\_  
Thomas G. Stovall, Director

## **APPENDIX A TO INITIAL ORDER**

### **NOTICE OF APPEAL PROCEDURES**

#### **Review of Initial Order**

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8<sup>th</sup> Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

#### **Review of Final Order**

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

### **YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER**

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.